Office of the Communications Security Establishment Commissioner

2009-2010

Report on Plans and Priorities

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Minister of National Defence

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Commissioner's Message

It is a pleasure to present the *2009-10 Report on Plans and Priorities*, the first Report on Plans and Priorities (RPP), of the Office of the Communications Security Establishment Commissioner (OCSEC). The 2009-10 fiscal year represents, to some extent, a new beginning for an agency that is in fact twelve years old.

Given that this is my office's first RPP, a brief history is required. The first Commissioner of the Communications Security Establishment was appointed by Order in Council pursuant to Part II of the *Inquiries Act* on June 19, 1996. The mandate of the Commissioner was to review the activities of the Communications Security Establishment Canada (CSEC) to ensure that they comply with the law, to inform the Minister of National Defence and the Attorney General of Canada of any activities of CSEC that the Commissioner believes may not be in compliance with the law, and to investigate complaints about CSEC's activities. Following the terrorist attacks in the United States on September 11, 2001, Parliament adopted the *Anti-terrorism Act,* which came into force on December 24, 2001. This Act amended the *National Defence Act* (*NDA*) by adding Part V.1 and creating legislative frameworks for both the CSEC and the Commissioner. The Commissioner was also given a new duty pursuant to the *Security of Information Act* regarding persons who are permanently bound to secrecy wanting to reveal special operational information and to claim a public interest defence.

The Office exists to support the Communications Security Establishment Commissioner whose current mandate is to ensure that the CSEC performs its duties and functions in accordance with the laws of Canada. This includes having due regard for the privacy of Canadians. More precisely, the Commissioner reviews the activities of CSEC to ensure they comply with the laws of Canada; informs the Minister of National Defence and the Attorney General of Canada of any activity of CSEC that the Commissioner believes may not be in compliance with the law; undertakes, in response to a complaint about CSEC, any investigation that the Commissioner considers necessary; and receives, under the *Security of Information Act*, information from persons permanently bound to secrecy and seeks to defend the release of special operational information about CSEC on the grounds that it is in the public interest. My office must always remain fully conscious of the highly classified nature of the work it performs and the extreme sensitivity of my reports to the Minister and be ever vigilant in the performance of its duties.

From its creation in 1996, OCSEC had been funded by the Department of National Defence (DND) but it received administrative and other support from the Privy Council Office (PCO). In April 2008, OCSEC was established as a separate agency with its own appropriation and began at that time the process of transitioning from full dependence for administrative and operational support to complete independence. I anticipate that we will be fully autonomous by the end of fiscal year 2009-10. Our financial resource requirements at that time will be slightly in excess of $ 2 million dollars while our human resource requirements (full-time staff complement) are expected to be 9, supported by a number of subject matter experts, as required.

This report details the plans and priorities of the OCSEC over the next three years. The reviews and investigations, both underway and anticipated, will examine the areas of greatest risk to compliance with the law, including the privacy of Canadians. This report describes how a small group of skilled, devoted professionals, working efficiently and effectively together provides assurance to all Canadians that their rights have not been compromised and that the CSEC's critical activities – (as set out under subsection 273.64(1) of the *National Defence Act)* to provide foreign intelligence in accordance with the intelligence priorities of the Government of Canada; to provide advice, guidance, and services to help protect the electronic information and information infrastructures of importance to the Government of Canada; and to provide technical and operational assistance to federal law enforcement and security agencies in the performance of their lawful duties – are discharged lawfully.

The Honourable Charles D. Gonthier, C.C., Q.C.
Commissioner

Section I - Departmental Overview

SECTION I – DEPARTMENTAL OVERVIEW

1.1 Summary Information

Raison d'être

On behalf of all Canadians, the Office of the Communications Security Establishment Commissioner exists to support the Commissioner in ensuring that the CSEC performs its duties and functions in accordance with the laws of Canada. This includes having due regard for the privacy of Canadians.

Responsibilities

The duties of the Commissioner are set out under subections 273.63(2) and 273.65(8) of the *National Defence Act*:

a) to review the activities of the Communications Security Establishment Canada to ensure they comply with the law;
b) in response to a complaint, to undertake any investigation that the Commissioner considers necessary;
c) to inform the Minister of National Defence and the Attorney General of Canada of any activity of CSEC that the Commissioner believes may not be in compliance with the law;
d) to review and report to the Minister as to whether the activities carried out under a ministerial authorization are authorized;

and under the *Security of Information Act:*

e) to receive information from persons who are permanently bound to secrecy and seek to defend the release of classified information about CSEC on the grounds that it is in the public interest.

The current duties have evolved over time. The first Commissioner of the Communications Security Establishment was appointed by Order in Council pursuant to Part II of the *Inquiries Act* on June 19, 1996. The original mandate of the Commissioner was to review the activities of the Communications Security Establishment Canada (CSEC) to ensure that they were in compliance with the law and to investigate complaints about CSEC's activities. Following the terrorist attacks in the United States, Parliament adopted the *Anti-terrorism Act,* which came into force on December 24, 2001. This Act amended the *National Defence Act* (*NDA*) by adding Part V.1 and creating legislative frameworks for both the CSEC and the Commissioner. The Commissioner was also given a new duty pursuant to the *Security of Information Act* regarding persons who are permanently bound to secrecy wanting to reveal special operational information and to claim a public interest defence.

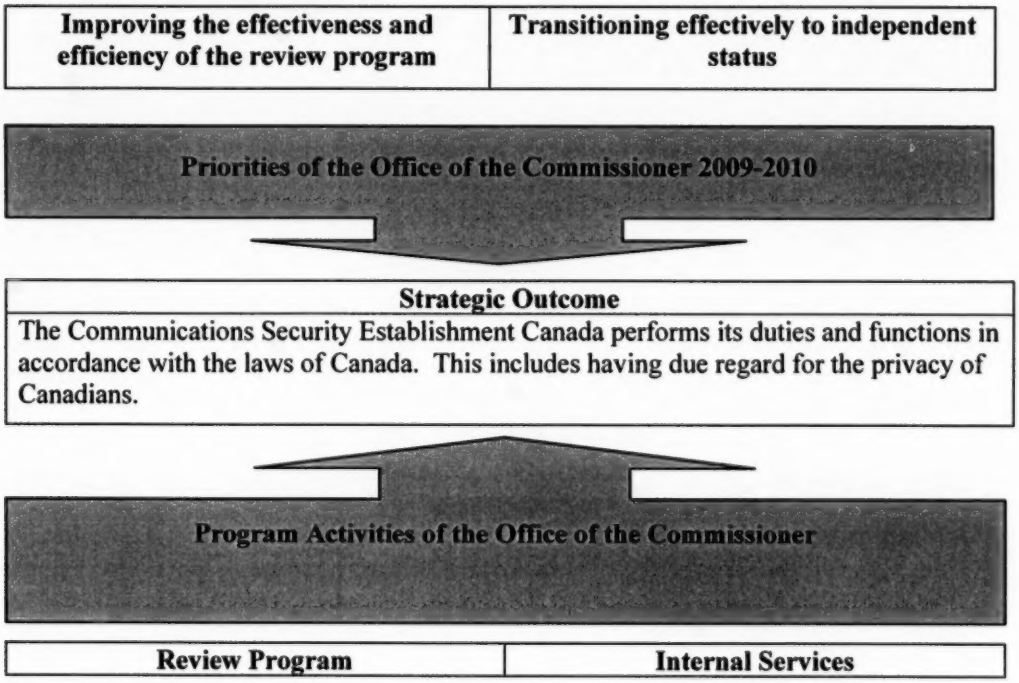
The Office of the Communications Security Commissioner can be most aptly described as a micro-agency. Operating out of Ottawa, the Office of the Commissioner currently has 9 employees and a program budget of $1.5 million. However, the Office of the

Commissioner is just completing its first year of operations as a separate entity and it is expected that the resource base may grow to 11 employees and an operating budget of slightly in excess of $2 million as the Office becomes fully self-sufficient. It should be noted that the *National Defence Act* provides the Commissioner with independent hiring authority, and accordingly, OCSEC is a separate employer.

Strategic Outcome

The strategic outcome of the Office of the Communications Security Establishment Commissioner is that the CSEC performs its duties and functions in accordance with the laws of Canada. This includes having due regard for the privacy of Canadians. The OCSEC has two program activities – its review program and internal services.

The relationship of the program activities, the priorities and the strategic outcome is illustrated in the diagram below.


Improving the effectiveness and efficiency of the review program
Transitioning effectively to independent status
Priorities of the Office of the Commissioner 2009-2010
Strategic Outcome
The Communications Security Establishment Canada performs its duties and functions in accordance with the laws of Canada. This includes having due regard for the privacy of Canadians.
Program Activities of the Office of the Commissioner
Review Program
Internal Services

1.2 Planning Summary

Financial Resources ($ millions)

2009-2010	2010-2011	2011-2012
$1.5	$1.5	$1.5

The financial resources table above provides a summary of the total planned spending for the Office of the Communications Security Establishment Commissioner for the next three fiscal years.

Human Resources

2009-2010	2010-2011	2011-2012
9	9	9

The human resources table above provides a summary of the total planned human resources for the Office of the Communications Security Establishment Commissioner for the next three fiscal years.

Strategic Outcome: The Communications Security Establishment Canada performs its duties and functions in accordance with the laws of Canada. This includes having due regard for the privacy of Canadians.

Performance Indicators		**Targets**			
Degree of CSEC compliance with the laws of Canada		Maintain or improve the degree of compliance throughout the planning period			
Extent to which privacy of Canadians is respected		To be determined			
Program Activity	**Forecast Spending 2008-09 (millions)**	**Planned Spending (millions)**			**Alignment to Gov't of Canada Outcomes**
		2009 - 10	**2010 - 11**	**2011 – 12**	
Review Program	1.3	1.3	1.3	1.3	Safe and secure Canada
Internal Services	.2	.2	.2	.2	Safe and secure Canada

Contribution of Priorities to Strategic Outcomes

Operational Priorities	Type	Links to Strategic Outcome	Description
Improving the effectiveness and efficiency of the review program	Ongoing	SO 1	OCSEC will continue to refine its criteria related to the selection of reviews to ensure that areas of greatest risk are addressed. As well, OCSEC will also continue to work collaboratively with CSEC in the planning and execution of reviews to ensure that reviews are completed in a timely fashion and that recommendations for change are accepted. OCSEC recognizes the need to expand its capacity to perform reviews and will focus on recruiting professionals to expand and reinforce current capabilities. In order to promote a greater appreciation and understanding of the challenges facing the security and intelligence community, OCSEC will continue to support international and domestic conferences addressing key security and intelligence issues. As well, the Commissioner will continue to meet senior government officials to discuss his mandate and the operations of the OCSEC and to foster a greater understanding of the challenges to be faced.
Management Priorities			
Transitioning effectively to independent status	Ongoing	SO 1	In 2008-09, OCSEC was established as an independent agency with its own funding. OCSEC will continue to establish itself by implementing its own financial system, acquiring the necessary financial, personnel, procurement, informatics and security services to meet the operational and informational requirements of both OCSEC management and the central agencies. Additional office accommodation with the appropriate security fit-up will also be acquired.

Terrorism and terrorist acts and activities are now a part of our lives. It is vitally important that the Communications Security Establishment Canada as an organization carries out its work with not just the requisite technical ability but with a respect for the rule of law and democratic principles, which respect the privacy of all Canadians. It is a delicate balance. OCSEC will continue to review how well that balance is maintained and to ensure that the collection of information supports proper decision-making within CSEC and the protection of Canadians but does so in a way that safeguards privacy.

Despite the recommendations of this Office, suggested amendments to the *National Defence Act* (*NDA*) that would further clarify and define the legislated mandate of the CSEC are still outstanding. This lack of precision can impede the proper discharge of the Commissioner's mandate. OCSEC will continue to push for these amendments to the *NDA*.

A constant concern of the Office of the Commissioner is to remain current in the ever-changing world of technology. Working collaboratively with CSEC has resulted in their training being made available to the staff of the OCSEC. In addition, OCSEC continuously promotes involvement in organizations and participation in conferences that concern themselves with and address security and intelligence matters, both in Canada and internationally.

The Office of the Commissioner is transitioning to independent financial status. Management has completed its determination of the required skills and resources essential to ensure that OCSEC will be able to continue to function effectively and efficiently and in compliance with the legislation. During 2009-10, these additional skills and resources will be acquired and deployed.

Expenditure Profile

In 2008-09, OCSEC received its first appropriation - $1.5 million. This funding was to replace the funding previously provided by DND. It was also to allow OCSEC to move toward administrative independence and to gradually replace support services previously provided by DND and the Privy Council Office with its own support services.

It is anticipated that OCSEC will require slightly in excess of $2 million dollars to be able to fully discharge its mandate and to completely achieve administrative independence. This level of funding, once approved and authorized, would remain constant over the planning period.

2009-10 Allocation of Funding by Program Activities

The funding will be for the OCSEC program activity, its review program, as well as for internal services. It should be noted that the OCSEC mandate also includes undertaking any investigation deemed necessary in response to a complaint. No complaints were received that required a formal investigation in the past two years. The current level of

funding does not include any funding for complaints investigations. Should a complaint be received which results in a formal hearing, additional funding would have to be requested. The Commissioner also has a duty under the *Security of Information Act* to receive information from persons who are permanently bound to secrecy and seek to defend the release of classified information about CSEC on the grounds that it is in the public interest. No such matters were reported in the past two fiscal years.

Voted and Statutory Items

Voted and Statutory Items displayed in the Main Estimates ($ millions)

Vote No. or Statutory Item	Truncated Vote or Statutory Wording	2008 – 09* Main Estimates	2009 – 10 Main Estimates
25	Program expenditures	0	1.4
(S)	Contributions to employee benefit plans	0	.1
	Total for the Office of the Commissioner	0	1.5

* *Initial funding to establish the Office of the Communications Security Establishment Commissioner as a separate agency was received through Supplementary Estimates A 2008-09.*

SECTION II - ANALYSIS OF PROGRAM ACTIVITY BY STRATEGIC OUTCOME

SECTION II – ANALYSIS OF PROGRAM ACTIVITY BY STRATEGIC OUTCOME

2.1 Strategic Outcome

The Communications Security Establishment Canada performs its duties and functions in accordance with the laws of Canada and with due regard for the privacy of Canadians.

The following section describes OCSEC program activity and the expected result of this activity. This section also explains how OCSEC plans on meeting the expected results and presents the financial and non-financial resources that will be dedicated to the program activity.

This section will contain information on OCSEC's program activity as well as the internal services activity.

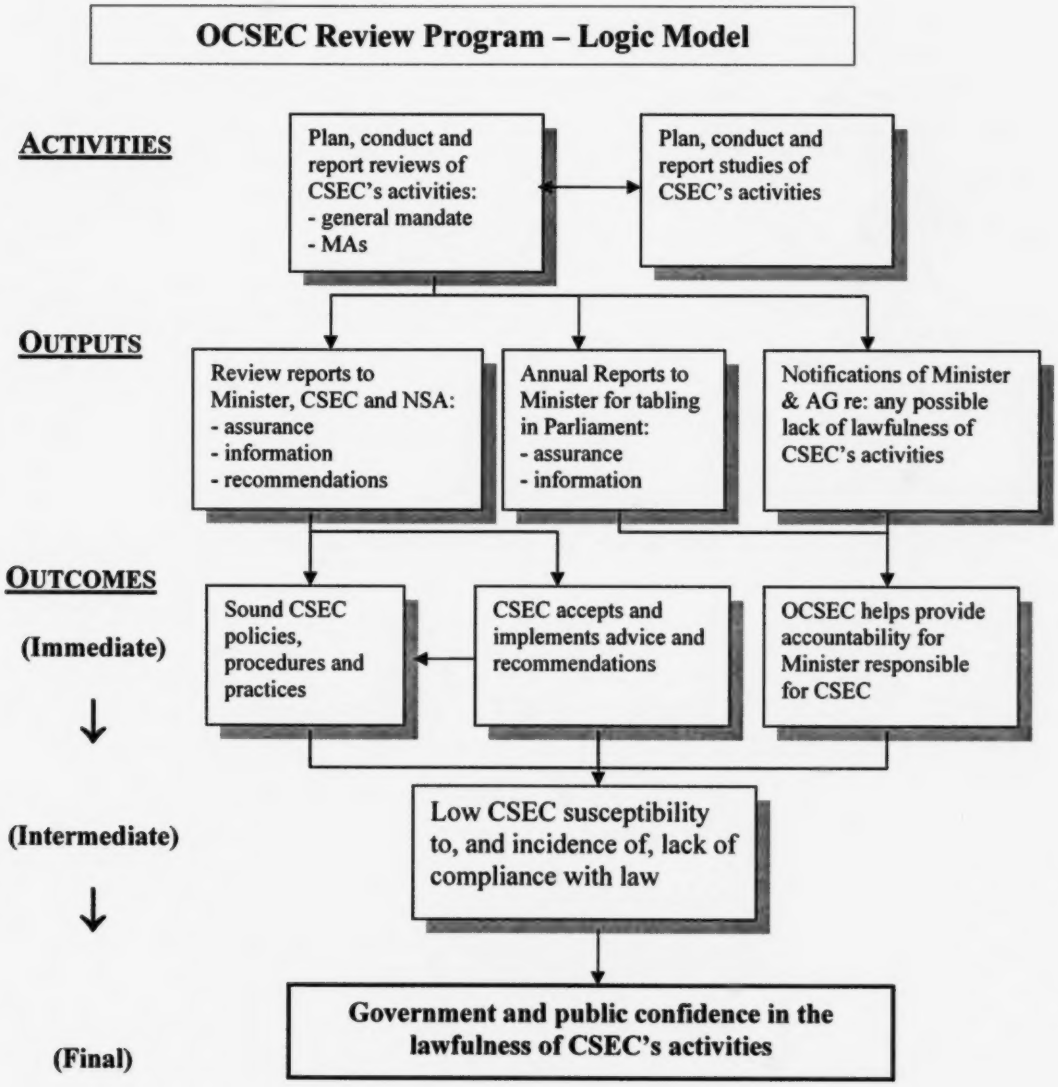
2.1.1 Program Activity – Review Program

Program Activity Expected Results	Performance Indicators	Targets
CSEC's activities and operations are conducted in accordance with the law while respecting the privacy of Canadians.	Level of compliance % of recommendations implemented	Increase level of compliance Increase the % of recommendations implemented (more precise targets will be developed over the planning period)
	Privacy of Canadians is protected	OCSEC will be working with Treasury Board officials to develop and implement a comprehensive Management, Resources, and Results Structure including a fully functioning performance measurement framework in 2009-10.

Financial Resources ($ millions)			Human Resources		
2009-10	2010-11	2011-12	2009-10	2010-11	2011-12
1.3	1.3	1.3	6	6	6

The review program includes research, monitoring, planning, the conduct of reviews and the reporting of results. In addition, it also includes consultations and communications, including outreach, with stakeholders and the public.

The following logic model provides a graphic description of how the review program functions.


OCSEC Review Program – Logic Model
ACTIVITIES
Plan, conduct and report reviews of CSEC's activities:
- general mandate
- MAs
Plan, conduct and report studies of CSEC's activities
OUTPUTS
Review reports to Minister, CSEC and NSA:
- assurance
- information
- recommendations
Annual Reports to Minister for tabling in Parliament:
- assurance
- information
Notifications of Minister & AG re: any possible lack of lawfulness of CSEC's activities
OUTCOMES
(Immediate)
Sound CSEC policies, procedures and practices
CSEC accepts and implements advice and recommendations
OCSEC helps provide accountability for Minister responsible for CSEC
(Intermediate)
Low CSEC susceptibility to, and incidence of, lack of compliance with law
(Final)
Government and public confidence in the lawfulness of CSEC's activities

Planning Highlights

In order to achieve the intended results, OCSEC plans to undertake the following:

- Plan, conduct and report the results of reviews – OCSEC will continue to complete its reviews in accordance with its approved three year plan. The planning process is a risk based approach developed in collaboration with the CSEC and based in part on a review of key documentation as well as emerging issues. The three year plan is a living document that is revised (and updated as required) every 6 months.
- Operate effectively – OCSEC intends to develop targets for the performance of its reviews to ensure that they are on-time and on-budget. Setting targets is difficult because each review differs from the other. However, it is critical to incorporate precise review planning into the budgetary process.
- Operate efficiently – OCSEC will continue to look at the review process to identify opportunities to be more efficient. Increased training and the use of better review tools will be supported in order to increase efficiency.
- Collaboration – In May 2005, an OCSEC-led initiative was the creation of the Review Agencies Forum (RAF). RAF meets twice each year to discuss matters of common interest to its members. In addition to OCSEC, the current members of RAF are:

  The Security Intelligence Review Committee (SIRC)
  The Inspector General of CSIS
  The RCMP Public Complaints Commission
  The Office of the Privacy Commissioner

  OCSEC will continue to work with the security and intelligence community, both domestically and internationally. These collaborations (meetings, associations, conferences, etc.) allow information and experience to be shared, differing methodologies to be studied and best practices to be adopted.

2.1.2 Program Activity – Internal Services

Financial Resources ($ millions)			Human Resources (FTEs)		
2009-10	2010-11	2011-12	2009-10	2010-11	2011-12
.2	.2	.2	3	3	3

In order to fully support the review program, OCSEC plans to undertake the following:

- Achieve administrative independence during 2009-10 – since its inception in 1996 until April 2008, OCSEC was funded by the Department of National Defence and received administrative support from the Privy Council Office. Administrative independence will require OCSEC to comply with the legislative reporting requirements of the central agencies. OCSEC needs to resource (staff or contract) and provide the full range of administrative services, including finance, human resources, administration, informatics, information management, and security.

The OCSEC operational policy manual will continue to be updated as internal services are moved away from the PCO and are established and operated within OCSEC.

- Establish a Management Accountability Framework – Once resources are in place and the systems are operational, OCSEC will establish a management accountability framework to ensure that internal services are conducted in a timely and cost effective manner.
- Conduct operational and management reviews – Internal operational and management reviews are conducted on a cyclical basis; these will be continued over the planning period.
- Acquire additional secure office space – Of immediate concern is the acquisition of additional secure office space to accommodate the additional resources necessary to achieve administrative independence.

Benefits for Canadians

OCSEC's activities support the Commissioner's assurance to the Minister, Parliament and to all Canadians that the activities undertaken by CSEC are in compliance with the law and that the privacy of Canadians has been safeguarded.

SECTION III - SUPPLEMENTARY INFORMATION

Section III - Supplementary Information

3.1 Other Items of Interest

The Office of the Communications Security Establishment Commissioner can be reached at the following address:

Office of the Communications Security Establishment Commissioner
P.O. Box 1984, Station "B"
Ottawa, ON K1P 5R5

The Office may also be reached:

Telephone: 613-992-3044
Facsimile: 613-992-4096
Email: info@ocsec-bccst.gc.ca

For further information on the Office of the Communications Security Establishment Commissioner, its mandate and function, please visit our website: www.ocsec-bccst.gc.ca